IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 891 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
VEERAM MULU GORANIA - Opponent(s)

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Appearance :
MR IM PANDYA ADDL.PUBLIC PROSECUTOR for Appellant,
MR HM PRACHCHHAK for Respondent,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.R. SHAH)

1. Leave to appeal is granted.

2. The appeal is ADMITTED.

3. Mr.H.M.Prachchhak, learned advocate waives the service for the respondent - accused.

4. Present appeal is preferred by the appellant – State under sec.378 of the Code of Criminal Procedure against the judgement and order dtd.24/2/2004 passed by the learned Additional Sessions Judge, 9th Fast Track Court, Porbandar in Sessions Case No.11 of 2001 whereby the respondent being accused of the Sessions Case, came to be acquitted by the learned trial court for the charges levelled against him under sections 498A & 307 of Indian Penal Code.

5. Mr.I.M. Pandya, learned Additional Public Prosecutor for the appellant State - and Mr.H.M. Prachchhak, learned advocate for the respondent - accused requested this Court to hear the appeal finally as the Records and Proceedings of the trial court are available with this Court and that they shall provide extra copies of the evidence recorded during the trial and the documents produced on record. The request is granted.

6. Heard Mr.I.M. Pandya, learned Additional Public Prosecutor for the appellant - State and Mr.H.M. Prachchchhak, learned advocate for the respondent at length.

7. According to the prosecution, the marriage of the daughter of the complainant has taken place with the son of the accused in the last summer and thus the accused is the father-in-law of the deceased Sumariben. As per the prosecution case, the deceased, her husband and accused were residing together and the accused was abusing and harassing the deceased, which led her to commit suicide by consuming poisonous tablets on 17/9/1999 and she has died during the treatment. Therefore, a complaint was registered with the Bagvadar Police Station and the P.S.O. registered the complaint at Entry No.74 of 1999 and the investigation was handed over to Mr.Virda, Police Sub Inspector and the same was registered as Accidental Death Inquiry No.40 of 1999 and as the investigation was to be completed by Deputy Superintendent of Police, the inquiry was handed over to Mr.S.M. Katara, who recorded statements of the witnesses and during the course of the inquiry and father of the deceased named Virambhai Hajabhai gave complaint on 19/9/1999 with regard to the harassment and cruelty to the deceased and the same was registered as complaint / FIR and the investigation was handed over to the concerned Police Sub Inspector and Mr.U.K. Virda,

Police Sub Inspector conducted the investigation, recorded statements etc. and considering the dying declaration and investigation papers, ultimately chargesheet came to be submitted in the court of learned Judicial Magistrate, Porbandar and a Criminal Case was registered and the said case was committed to the Court of Sessions as per the provisions of Sec.207 of the Code of Criminal Procedure and the same was registered as Sessions Case No.11 of 2001. The learned Additional Sessions Judge frame Charge against the respondent accused on 17/10/2003 vide Ex.1, to which the respondent pleaded not guilty and therefore, the respondent was put to trial.

8. Thereafter, the prosecution has examined as many as 12 witnesses and produced on record voluminous documents to prove its case. On prosecution evidence being over, the learned trial judge brought to the notice of the respondent - accused the incriminating circumstances appearing against him in the evidence of the prosecution and statement of the respondent accused was recorded under sec.313 of the Code of Criminal Procedure, wherein the defence of the respondent accused was of total denial.

9. The learned Judge, after hearing the prosecution and defence and considering the evidence, oral so also documentary, acquitted the respondent accused and hence this appeal by State.

10. We have gone through the evidence recorded during the trial thoroughly and have re-appreciated the evidence to assess the reasons assigned by the Trial Judge for the acquittal. We have considered the vital features of the matter and reasonable probabilities arising out of the circumstances. We have taken into consideration the contentions raised by the appellant as well as the respondents in this Appeal. We have taken threadbare scrutiny of the reasons assigned by the Trial Judge for the acquittal.

11. It is an admitted fact that Sumariben met with homicidal death for which the prosecution examined PW-1 Dr.Dilipbhai Amtutlal Vyas at Ex.5 and according to him, deceased Sumariben died due to cardio respiratory failure due to poison. Though he has been cross-examined, but nothing was brought to show that the death of the deceased was not homicidal death and therefore, the learned Judge has rightly come to the conclusion that the death of Sumariben was homicidal.

12.The prosecution has examined PW-2 complainant and father of the deceased named Virambhai Hajabhai at Ex.8. He has in no uncertain terms has stated that the matrimonial life of the deceased was good, there was no problem and the deceased had never made any complaint against her in-laws about harassment. Though he has been declared as hostile, the learned A.P.P. Throughly cross-examined him, but no incriminating material has been brought out against the accused. Similarly, the prosecution also examined PW-3 Shantiben Virambhai at Ex.10, who is the elder sister of the deceased Sumariben. She has also stated that there was no ill-treatment to the deceased Sumariben and she is not aware why Sumariben has consumed poisonous tablets. She is also cross-examined by the APP as she was declared hostile, but nothing has been come out against the accused. That thereafter, the prosecution has examined PW-4 Shantaben wife of Keshubhai – sister-in-law of the deceased at Ex.11. She has also stated that there was no problem and/or ill-treatment to the deceased and the deceased had never told about any harassment by her in-laws. She was also declared hostile and was throughly cross-examined, but nothing has been

found against the accused.

13. Thereafter, the prosecution has examined PW-5 Rambhiben Polabhai at Ex.12, who is also elder sister of the deceased. She has also not supported the prosecution and has stated that there was no harassment or ill-treatment to the deceased by her in-laws and her matrimonial life was good. She is also cross-examined, but no incriminating material has been found against the accused. Thereafter, the prosecution has examined PW-6 – Santokben wife of Virambhai – mother of the deceased at Ex.13 and PW-7 – Keshubhai Virambhai – brother of the deceased at Ex.14, both of them have not supported the prosecution and have specifically and in no uncertain terms have stated that there was no any harassment or any problem to the deceased. Both of them were declared hostile and therefore, both of them were throughly cross-examined by the learned A.P.P., but, nothing has been found against the accused. Thereafter, the prosecution has examined PW-9 – Shailesh Mangalbhai Katara at Ex.25, who has stated Virambhai Hajabhai gave complaint to him with regard to harassment to his daughter which was recorded in writing and the same was sent to the Police Sub Inspector for

further investigation. In the cross-examination, he has specifically admitted that while investigating the Accident Death Inquiry, nothing has been found that any ill-treatment or harassment was given by the in-laws to the deceased and thus, while investigating the Accidental Death Inquiry, no incriminating material has been found against the accused. That thereafter, the prosecution examined PW-10 Virendrasinh Nandsinh Chauhan – Police Sub Inspector at Ex.27, who has stated that except making entry in the Station Diary with regard to the visit of Mr.S.M. Katara, Dy.Superintendent of Police, he has no further personal knowledge. Thereafter, the prosecution examined PW-11 Kanabhai Karshanbhai Jethva at Ex.28, who was serving as P.S.O. of Bagavadar Police Station at the relevant time, who has stated that he has made the entry in the Station Diary with regard to Janvajog Entry No.74 of 1999 and Accidental Death Inquiry No.40 of 1999. Thereafter the prosecution examined PW-12 – Ukabhai Karshanbhai Virda – investigating officer at Ex.31. He has submitted that he was serving as Police Sub Inspector of Bhagvadar Police Station at the relevant time and he received complaint on 19/9/1999 from Mr.V.N. Chauhan, Police Sub Inspector and has recorded

statements of he neighbours and relatives of the deceased and also other witnesses from the in-laws. He has also sent necessary Yadi to the Executive Magistrate for recording dying declaration as well as to the Medical Officer for inquest.

14. The learned trial court, considering the evidence on record as well as dying declaration dtd.17/9/1999 recorded by the Executive Magistrate Ex.21, passed the aforesaid order by holding that the prosecution has mesirably failed to prove that there was any harassment and/or ill-treatment and/or torture by the in-laws to the deceased due to which the deceased consumed the poisonous tables and committed suicide.

15. This Court has also considered the entire evidence on record, oral as well as documentary, including the dying declaration Ex.21 recorded by the Executive Magistrate at Bhavsinhji Hospital and the said dying declaration is in questionnair form. In response to the question asked by the Executive Magistrate why she has consumed medicine, the deceased has stated that she does not want to live. In response to the further question why she does not want o live, she has replied that she is fade up with the life. In response to the specific question by the

Executive Magistrate that any ill-treatment or harassment to her, she has specifically replied that “No” and she does not want to live.

16. Considering the evidence, we are of the considered opinion that the learned trial court has not committed any error in acquitting the respondent accused.

17. This being an appeal against the acquittal, the scope of the appeal is limited and well explained by the Apex Court in AJIT SAVANT MAJAGAVI vs. STATE OF KARNATAKA, as reported at (1997) 7 SCC 110, in para – 16 as under :

> *(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against the order of conviction.*
>
> *(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.*

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the court especially in the witness box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

18. In view of above, while we scanned the reasons advanced by the Trail Judge, we have no hesitation to come to the conclusion that the view taken by the Trail Court is possible and probable from the evidence recorded during the trial. By no stretch of reasoning, it could be said that the view taken by the Trial Court is perverse, manifestly erroneous, palpably wrong or demonstrably unsustainable. In appeals against the order of acquittal, even if legitimate second view is possible, the order of acquittal cannot lightly be interfered with unless the conclusions arrived at by the Trial Court are found by the appellate court perverse, manifestly erroneous, palpably wrong and demonstrably unsustainable.

19. In view of above, the judgment and order impugned in this Appeal warrants no interference and, hence, the following order :

"Appeal stands dismissed.

(J. R. VORA, J.)

(M. R. SHAH, J.)

Rafik